Filed 4/18/19 In re D.S. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.S., a Person Coming Under the Juvenile Court Law.	B290647 (Los Angeles County Super. Ct. No. DK00856A)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CHESTER M., Defendant and Appellant.	

APPEAL from an order of the Superior Court for Los Angeles County, Natalie Stone, Judge. Affirmed.

Judy Weissberg-Ortiz, by appointment of the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Chester M. (father) appeals from an order of the juvenile court terminating his parental rights to his daughter, D.S. The only issue raised in this appeal is whether the juvenile court and the Los Angeles County Department of Children and Family Services (the Department) complied with the requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1900 et seq.). We conclude they did, and affirm the order terminating parental rights.

BACKGROUND

Because the only issue on appeal relates to ICWA, we limit our discussion of the background of this case to the facts relevant to that issue.

On September 10, 2013, the Department filed a dependency petition related to D.S. alleging two counts under Welfare and Institutions Code[1] section 300, subdivision (b), based upon allegations regarding mother's drug abuse and her history of leaving D.S. with members of her family without an appropriate plan for the child's care. Attached to the petition was a form, ICWA-010(A), signed by the case social worker, indicating that mother was questioned regarding Indian ancestry on September 5, 2013, and she denied any known Indian ancestry.

On the same day the petition was filed, September 10, mother filled out and signed a form entitled "Parental Notification of Indian

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[1] Further undesignated statutory references are to the Welfare and Institutions Code.

Status" (form ICWA-020). She checked the box indicating that she "may have Indian ancestry," and handwrote "I have no details" next to it. At the detention hearing that same day, the juvenile court (Judge Carlos Vazquez, presiding) asked whether mother had any American Indian heritage. Mother's counsel responded: "Mother indicates that she does; however, she has no information regarding the name of the tribe or the relatives who have the heritage." The court then stated: "Given that there is no information indicating that she has American Indian heritage, the court will make a finding that at this point there is no evidence of American Indian heritage that would qualify under ICWA in this matter." The minute order from the detention hearing stated: "Mother indicates no American Indian heritage."[2]

At the time the petition was filed, father's whereabouts were unknown. On November 1, 2013, the dependency investigator (DI) located him at Twin Towers Correctional Facility; he said that he had been arrested in June 2013 on an outstanding warrant. He confirmed that he was D.S.'s father, and said that he was unaware that D.S. was in foster care. The DI submitted a request for removal of prisoner from county jail for the scheduled jurisdiction hearing, which was held on November 6, 2013.

On November 6, 2013, before the jurisdiction hearing was held, Sarah Shon, from the Law Office of Timothy Martella, signed a form

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[2] The subsequent jurisdiction/disposition report filed November 6, 2013 stated: "On 09/10/13, the court found that the Indian Child Welfare Act does not apply to this case."

ICWA-020 on behalf of father. Shon checked the box indicating that father "may have Indian ancestry," and hand wrote, "can get further information from PGGM: Carolynn M[.]," along with a telephone number. Shon also wrote "unknown" in the space for the name of the tribe or band to which father purportedly belonged.

Father appeared, in custody, at the jurisdiction hearing on November 6, 2013. As it was his first appearance, the juvenile court (Judge Carlos Vazquez, presiding) appointed Renelde Espinoza (also from the Law Office of Timothy Martella) as father's counsel. After finding that father was D.S.'s presumed father, the court asked whether father had any American Indian heritage. Father's counsel stated: "We don't believe so, Your Honor." The court responded: "Okay. The mother previously indicated that she does not have any American Indian heritage. So the court will make a finding that ICWA does not apply in this case as neither parent is claiming any American Indian heritage." Neither father nor mother (who also was present) said anything to indicate they did not agree with the court's statement. After mother pleaded no contest to the petition, the court found that D.S. was a child described by section 300, subdivision (b), and set the matter for disposition.

The disposition hearing was continued several times, and was not held until July 11, 2014, at which time the court declared D.S. a dependent of the juvenile court, removed her from parental custody,

and ordered family reunification services for both parents.[3] By the time of the permanency hearing (§ 366.21, subd. (f)) held on August 20, 2015, the Department reported that each parent had made "minimal to no progress in court-ordered services," and that father was arrested in Las Vegas on charges of lewdness with a child under the age of 14, statutory sex seduction by a person 21 and over, and sex assault against a child under the age of 14. The juvenile court (Judge Frank Menetrez, presiding) terminated family reunification services and set the matter for a section 366.26 hearing.

The section 366.26 hearing was continued several times for various reasons over the next two and a half years, and finally was held on April 9, 2018. The juvenile court (Judge Natalie Stone, presiding) found by clear and convincing evidence that D.S. was likely to be adopted, found no exception to adoption applied, and terminated mother's and father's parental rights. Fifty-nine days later, father filed a notice of appeal from the order terminating his parental rights.

DISCUSSION

"ICWA reflects a congressional determination that it is in the best interests of Indian children to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations. [Citations.] It is intended to protect Indian children and to promote the

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[3] In the report filed for the disposition hearing, as in each of the post-jurisdiction reports filed in this case over the next four years, the Department either reported that the court found on November 16, 2013 [*sic*] that ICWA did not apply, or simply stated that ICWA did not apply.

stability and security of Indian tribes and families. [Citations.]" (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1385.) An "Indian child" is defined in ICWA as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); see also § 224.1, subd. (b) [definition under California law].)

"When a court 'knows or has reason to know that an Indian child is involved' in a juvenile dependency proceeding, a duty arises under ICWA to give the Indian child's tribe notice of the pending proceedings and its right to intervene." (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538 [citing, *inter alia*, 25 U.S.C. § 1912(a); § 224.3, subd. (d)].) "Alternatively, if there is insufficient reason to believe a child is an Indian child, notice need not be given. [Citations.]" (*In re Shane G.*, *supra*, 166 Cal.App.4th at p. 1538.)

The court and the party seeking foster-care placement "have an affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child." (§ 224.2, subd. (a); see also Cal. Rules of Court, rule 5.481(a).) Subdivision (d) of section 224.2 provides several circumstances under which there would be reason to know a child involved in a proceeding is an Indian child, including when "(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child[;] [¶] (2) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska

Native village[; or] [¶] (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child."

"If these or other circumstances indicate a child may be an Indian child, the social worker must further inquire regarding the child's possible Indian status. Further inquiry includes interviewing the parents, Indian custodian, extended family members or any other person who can reasonably be expected to have information concerning the child's membership status or eligibility. [Citation.] If the inquiry leads the social worker or the court to know or have reason to know an Indian child is involved, the social worker must provide notice. [Citations.]" (*In re Shane G.*, *supra*, 166 Cal.App.4th at p. 1539.)

In this case, father contends the juvenile court and the Department failed to comply with ICWA because both mother and father claimed Indian ancestry, which triggered the duty to conduct further inquiry and provide appropriate notice under ICWA. We disagree that further inquiry or notice was required under the facts of this case.

With regard to mother, we note that she gave conflicting responses regarding possible Indian ancestry. In an interview with the social worker on September 5, 2013, she said that she did not have any Indian ancestry. Five days later, she filed a form indicating that she may have Indian ancestry, but that she did not have any details about that purported ancestry. Her attorney then told the court that, although mother believed she had Indian heritage, "she has no

information regarding the name of the tribe or the relatives who have the heritage." The juvenile court reasonably could find, based upon mother's original statement that she did not have Indian ancestry, that it had no reason to know that D.S. was an Indian child and that no further inquiry was necessary. But even if we were to ignore that mother changed her story about her Indian ancestry, we nevertheless would conclude, as we did in *In re Hunter W.* (2011) 200 Cal.App.4th 1454, that mother's statement that she *may* have Indian ancestry but she did not know the name of the tribe or which relatives may have Indian heritage, is the kind of vague and speculative information that is insufficient to give the juvenile court or the Department reason to believe that D.S. might be an Indian child as defined by ICWA and thus trigger the duty to conduct further inquiry. (*Id.* at pp. 1467-1468; see also *In re J.D.* (2010) 189 Cal.App.4th 118, 125; *In re O.K.* (2003) 106 Cal.App.4th 152, 155.)

With regard to father, he, like mother, filed a form ICWA-020 that indicated that he may have Indian ancestry. And, like mother, he indicated that he did not know the name of the tribe. But unlike mother, father's form also indicated that the paternal great-grandmother may have further information, and it provided her name and telephone number. However, when the juvenile court subsequently asked father's counsel at the jurisdiction hearing whether father had any American Indian heritage, counsel stated, "We don't believe so, Your Honor." Father, who was present, did not attempt to correct his counsel's statement.

Father argues that, despite this denial of Indian heritage, the duty to conduct further inquiry was triggered because "[t]here is no explanation in the record as to why [father's] trial counsel made this statement in light of his ICWA-020, filed the same day." But we note that father did not sign the ICWA-020, which was filled out and signed by a different attorney than the attorney who represented him at the jurisdiction hearing. It may be that after conferring with father (and, possibly, with the attorney who filled out the form and/or with the paternal great-grandmother who was referenced on the form), trial counsel determined that, in fact, father did not have any Indian ancestry. In any event, the juvenile court and the Department were entitled to rely upon counsel's express denial of any Indian ancestry for father in light of father's silence. Thus, the juvenile court and the Department had no reason to believe that D.S. might be an Indian child, and therefore no duty to conduct further inquiry.

In short, we find that the juvenile court and the Department complied with the requirements of ICWA.

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DISPOSITION

The order terminating parental rights is affirmed.

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WILLHITE, J.

We concur:

MANELLA, P. J.

CURREY, J.